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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/591,577	06/09/2000	Charles A. Eldering	T702-03	2970

27832 7590 10/19/2007
TECHNOLOGY, PATENTS AND LICENSING, INC./PRIME
2003 SOUTH EASTON RD
SUITE 208
DOYLESTOWN, PA 18901

EXAMINER

RETTA, YEHDEGA

ART UNIT	PAPER NUMBER
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3622

MAIL DATE	DELIVERY MODE
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10/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/591,577

Applicant(s)

ELDERING ET AL.

Examiner

Yehdega Retta

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 133-139 and 152-159 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 133-139 and 152-159 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is in response to amendment filed July 30, 2007. Applicant amended claims 133-139 and added new claims 152-159. Claims 133-139 and 152-159 are pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 133-139 and 152-159 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Hendricks et al. (US 6,463,585).

Regarding claims 133, 134, 153 and 155, Hendricks teach accessing a plurality of consumer transaction records corresponding to a plurality of consumers and demographic information records corresponding to at least some of the plurality of consumers (see col. 4 lines 12-17, col. 54-67, col. 5 lines 1-19, col. 11 lines 31-40, col. 20 lines 4-27, col. 26 line 48 to col. 27 line 6); retrieving heuristics rules, wherein said heuristic rules have been pre-defined prior to accessing said plurality of consumer records transaction records and wherein said pre-defined heuristic rules have been developed through the application of at least one heuristic process (see col. 20 lines 35-48) (a simulated profile can be *generated using an algorithm similar to that described below that analyzes access history and viewing habits*. Using test information generated from a statistically significant number of viewers, the simulated profile algorithm *estimates the viewer's age, education, sex and other relevant information*) (col. 66 line 53 to col.

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67 line 4); retrieving at least one target consumer characteristics from an advertiser that has been selected at the discretion of the advertiser (see *col. 29 line 5-44*, *col. 30 lines 22-64*, *col. 31 lines 28-55*); applying said pre-defined heuristic rules to said plurality of consumer transaction records to generate inferred transaction characteristics of the consumer; generating inferred (*judgment based from facts or observation*) consumer characteristics of at least one of the consumers by associating the inferred transaction characteristics with demographic information records and determining applicability of an advertisement to at least one of the consumers by correlating the inferred market characteristics obtained by the application of the pre-defined heuristic rules with the target market characteristics selected by the advertiser (see *col. 35 lines 1-15*, *col. 44 lines 7-23*, *col. 66 line 27 to col. 67 line 4*, *col. 67 lines 53-62*, *col. 68 lines 48-55*, *col. 70 line 57 to col. 71 line 48*). Hendricks teaches advertiser selecting at least one target consumer characteristic and determining applicability of an advertisement to the consumer. Hendricks teaches see (Table H) the data indicates that for ad 1, and targeting category 1 (ADI) the advertiser believes that ad 1 is appropriate the viewers in groups 1 and 2 and is not appropriate for the viewers in groups 3 and 4. The advertiser also believes that ad 1 is equally appropriate for both the group 1 and the group 2 viewers. However, if the group 1 viewers been determined to be more likely to respond to ad 1 than the group 2 viewers, then group 1 could be given a higher percentage than group 2. Table H also shows that ad 1 is not applicable to groups 5 and 6 because only four groups are defined for the targeting category ADI. Thus, all the set top terminals 220 will be grouped into one of groups 1 through 4. (see *col. 35 lines 15-65*)

Regarding claims 135-139 and 156-138, Hendricks teaches wherein the plurality of transaction includes purchase transactions (see *col. 20 lines 20-34*; wherein the demographic

information is stored in a private consumer demographic database; the demographic information includes demographic location (see col. 5 lines 7-14, col. 29 lines 6-32); the demographic information stored in private database (see col. 11 lines 31-40, col. 29 lines 6-32, col. 44 lines 7-23); wherein the set of consumers are identified anonymously (see col. 44 lines 7-67).

Regarding claims 152, 154, Hendricks teaches the target consumer characteristics includes target demographic characteristic and target purchase characteristics (see col. 35 lines 15-65).

Response to Arguments

Applicant's arguments filed July 30, 2007 have been fully considered but they are not persuasive. In view of Applicant's argument, the rejection of 112 has been withdrawn. Regarding the rejection "102" applicant argues that "(h)endricks does not disclose the use of heuristic rules, let alone pre-defined heuristic rules "developed through the application of at least one heuristic process." Hendricks does teach the "correlation of demographic information with buy information." (Col. 44, lines 7-23). However, "correlation of demographic information with buy information" is not a heuristic rule that has "been pre-defined prior to accessing said plurality of consumer transaction records." "If the Examiner has evidence within Hendricks which points to the use of pre-defined heuristic rules which have been developed through the application of at least one heuristic process, Applicants respectful request that the Examiner meet her burden by explicitly pointing out a citation of Hendricks such a teaching exists".

Hendricks teaches as follows:

An alternative to gathering demographic data, a simulated profile can be *generated using an algorithm similar to that described below that analyzes access history and viewing habits.*

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Using test information generated from a statistically significant number of viewers, the simulated profile algorithm estimates the viewer's age, education, sex and other relevant information. The analysis requires reviewing the viewer's programs watched and statistically comparing the viewer's programs watched with the test group. Also, the algorithm can place the subscriber or viewer in a viewer category. This analysis is transparent from the subscriber's point of view and attempts to accurately profile the viewer. Various viewers or viewer categories can later be targeted with different advertisements (col. 66 line 53 to col. 67 line 4).

According to applicant's specification the heuristic rules are used in logical form or expressed as conditional probabilities to aid in forming a subscriber profile. According to the specification the *heuristic rules in logical form allow the system to apply generalizations which have been learned from external studies to obtain a characterization of the subscriber* and in the case of conditional probabilities, determinations of the probable content of a program can be applied in a mathematical step to a matrix of conditional probabilities to obtain probabilistic subscriber profiles indicating program and product likes and dislikes as well for *determining probabilistic demographic data*. Even though Hendricks does not use the term "heuristic", the algorithm of Hendricks provides the same outcome.

Applicant also argues that Hendricks does not disclose the selection of a consumer characteristic at an advertiser's discretion. Applicant asserts that although, the Examiner cites three specific places in Hendricks where the Examiner believes that Hendricks teaches a discretionary element, these citations do not teach the claimed element. In fact, Hendricks does not teach the claimed element anywhere. Examiner respectfully disagrees. Hendricks teach as follows: Advertisements can also be broken down as to how well an advertisement ranks with

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each group within one and up to all possible targeting categories, again using percentages. This information may be provided by an advertiser responsible for the advertisement. Table H shows a sample assignment of group rankings for 8 sample advertisements using the same targeting categories and group numbers as in Table G. Not all advertisements may be assigned to groups for a targeting category if an advertiser does not wish its advertisement to be targeted in the manner required by that targeting category. Referring to Table H, the data indicates that for ad 1, and targeting category 1 (ADI) the advertiser believes that ad 1 is appropriate the viewers in groups 1 and 2 and is not appropriate for the viewers in groups 3 and 4. The advertiser also believes that ad 1 is equally appropriate for both the group 1 and the group 2 viewers. However, if the group 1 viewers been determined to be more likely to respond to ad 1 than the group 2 viewers, then group 1 could be given a higher percentage than group 2. Table H also shows that ad 1 is not applicable to groups 5 and 6 because only four groups are defined for the targeting category ADI. Thus, all the set top terminals 220 will be grouped into one of groups 1 through 4 (see col. 35 lines 50-65).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,


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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yehdega Retta whose telephone number is (571) 272-6723. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Yehdega Retta
Primary Examiner
Art Unit 3622

YR